

Technical Support Document for the EGU GHG NSPS Proposed Rule

Docket ID No. EPA-HQ-OAR-2013-0495

Fossil Fuel-Fired Boiler and IGCC EGU Projects Under Development: Status and Approach

U.S. Environmental Protection Agency

Office of Air and Radiation

September 2013

EPA is not applying the current proposal to the Wolverine project, nor are we proposing an alternate CO₂ standard for the project at this time, because we do not have clear information as to where the project stands in the development process and therefore have not formulated a view as to whether the project is on the verge of construction. Nor have we formulated a view regarding whether the 1,100 lb CO₂/MWh standard or some other CO₂ standard would be representative of BSER for the project if it is on the verge of construction. We are taking comment on these questions and anticipate proposing at a later time that the project either be made subject to the 1,100 lb CO₂/MWh standard or be assigned to a subcategory with an alternate CO₂ standard, if the project has not already commenced construction for NSPS purposes (thereby becoming an existing source) or been canceled. This approach is discussed further in section IV below.

2. Washington County (Georgia)

In April 2013, the developer of this proposed supercritical pulverized coal EGU without CCS announced the execution of contracts for fabrication and erection of the project's boiler, as well as the intention to execute a contract for construction of the balance of the facility by September 2013.¹⁷ The execution date of the boiler contracts was one day before the April 13, 2013 date by which the project would have had to commence construction in order to qualify as a transitional source under the proposed April 2012 EGU GHG NSPS, and statements by the developer show the developer's intent for the project in fact to qualify as a transitional source under that proposal.¹⁸ EPA views these announcements and statements as clear indications of the developer's intent for the project to be treated as having commenced construction for NSPS purposes in April 2013, which (if correct) would make the project an existing source for purposes of the current proposal.

However, EPA is aware that a citizens group has voiced skepticism as to whether the Washington County project has in fact commenced construction for NSPS purposes. More generally, we remain uncertain as to the project's development status. Shortly after the April 2013 boiler contract announcement, the last of the project's original owners – a consortium of local electricity cooperatives – relinquished their ownership interests to third-party investors.¹⁹ As of mid-September 2013, the

¹⁷ "POWER4Georgians, LLC, today announced it executed a contract on April 12 with IHI Corporation, a leading international boiler manufacturer, for fabrication of the boiler for Plant Washington, a 850-MW clean-coal energy facility being developed near Sandersville, in Washington County. Also on April 12, POWER4Georgians entered into a contract with Zachry Industrial, Inc., one of the leading engineering and construction companies in the U.S., for erection of the boiler. POWER4Georgians expects to execute a construction contract for the balance of the facility by September 2013." Power4Georgians Press Release, *Power4Georgians Executes Contract for Plant Washington Boiler*, Apr. 15, 2013, <http://www.power4georgians.com/docs/P4G%20Release%20-%20Boiler%20Contracts%2004-13-13%20FINAL.pdf>.

¹⁸ "[T]he plant's developer signed key contracts on April 12 to purchase and erect a boiler, which he said means Plant Washington remains in compliance with a certain part of the rule that allows them to bypass any new carbon dioxide limits.... '[W]e're a transitional source [].'" Maggie Lee, *Plant Washington Future Unclear Due to Emissions Fight*, Macon Telegraph, Apr. 14, 2013, <http://www.macon.com/2013/04/14/2438122/deadline-fails-to-resolve-plant.html> (quoting Dean Alford, spokesperson for Power4Georgians).

¹⁹ Power4Georgians Press Release, *Power4Georgians Announces Corporate Restructuring*, Apr. 26, 2013, <http://power4georgians.com/docs/News/P4GReleaseRestructuring4-26-13.pdf> (describing end of ownership role for last four of ten earlier sponsoring cooperatives).

developer has not announced execution of a contract for construction of the balance of the facility or the execution of power contracts for any of the project's output with either the former owners or any other purchasers. The developer recently announced that it is applying for an 18-month extension of the date by which the project must commence construction for PSD purposes.²⁰ Thus, the developer's statements that the project has commenced construction, along with its request for a PSD permit extension, indicate ongoing interest in pursuing this project, but the other developments and lack of announcements create uncertainty as to whether the project should be considered to be on the verge of construction.

The developer of the Washington County project has not sought an applicability determination, and EPA is not making such a determination in the current proposal or in this document. Based solely on the developer's representations discussed above, at this time we are treating the project as having commenced construction for purposes of the current proposal. However, as indicated in the proposal and discussed further in section IV below, if it is determined in the future that the Washington County project has not commenced construction as of the date of publication of the current proposal, then the project will be addressed in the same manner as the Wolverine project. We note that nothing in this rulemaking binds EPA to the position that the Washington County project has commenced construction for NSPS purposes.

3. Holcomb (Kansas)

In February 2013, one of the developers of this proposed supercritical pulverized coal EGU without CCS informed EPA that the developer considers the project to have commenced construction for NSPS purposes.²¹ The developer had previously submitted comments on the April 2012 GHG NSPS proposal stating that contracts for both the steam generator (i.e., the boiler) and the steam turbine/electricity generator had already been awarded.²² We view the February 2013 statement, supported by the earlier comments, as a clear indication of the developer's intent for the project to be treated as having already commenced construction for NSPS purposes, which (if correct) would make the project an existing source for purposes of the current proposal.

However, EPA notes that the developer has also indicated concern that its view on the project's status of having commenced construction could be subject to legal challenge.²³ More generally, as with the Washington County project, we remain uncertain as to the Holcomb project's development status. For example, we are aware that this project faces pending state court litigation over the validity of its air permit that could delay or possibly prevent completion of the project.²⁴ We are also aware of federal court rulings that would require preparation of an environmental impact statement as a prerequisite to

²⁰ Jennifer Moulliet, *New Federal Air Pollution Rules Could Halt Power Plant*, 13WMAZ, Sept. 16, 2013, <http://sandersville.13wmaz.com/news/news/160712-new-federal-air-pollution-rules-could-halt-coal-power-plant>.

²¹ "We believe that we have done enough to 'commence construction' within the meaning of the [April 2012] Proposed Rule and thus qualify Holcomb 2 as a 'transitional source'...." Letter from Barbara Walz, Senior Vice President, Tri-State Generation & Transmission Association, to Janet McCabe, Principal Deputy Assistant Administrator, EPA Office of Air and Radiation, Feb. 13, 2013, available in the docket.

²² Comments of Tri-State Generation & Transmission Ass'n on April 2012 GHG NSPS Proposal at 9 (June 25, 2012), EPA-HQ-OAR-2011-0660-9845.

²³ Walz letter, *supra* note 23.

²⁴ *Sierra Club v. Moser*, No. 105,493 (Kan. argued Aug. 31, 2012).

obtaining any necessary further project approvals from the Rural Utilities Service, a requirement which presumably could likewise delay or otherwise impact the project.²⁵ We further note that in an October 2012 resource plan update submitted to state regulators by the same developer (also the project's principal sponsor), no new coal-fired project – i.e., neither the Holcomb project nor any other coal-fired project – is included among the new generation resources added to the developer's portfolio throughout the 20-year planning horizon under any of the eight planning scenarios evaluated.²⁶ Because the resource plan lacks any indication of a final determination at this time to complete the project and appears also to suggest a potential lack of market demand for the project, it is another basis for uncertainty as to whether the project should be considered to be on the verge of construction.

The developer of the Holcomb project has not sought an applicability determination, and we are not making such a determination in the current proposal or in this document. Based solely on the developer's representations discussed above, at this time we are treating the project as having commenced construction for purposes of the current proposal. However, as indicated in the proposal and discussed further in section IV below, if it is determined in the future that the Holcomb project has not commenced construction as of the date of publication of the current proposal, then the project will be addressed in the same manner as the Wolverine project. We note that nothing in this rulemaking binds EPA to the position that the Holcomb project has commenced construction for NSPS purposes.

4. Two Elk (Wyoming)

This proposed pulverized coal EGU without CCS was originally issued a PSD permit in 1998.²⁷ The permit was subsequently revised and reissued twice, most recently in 2003.²⁸ Responding to a deadline set by the Wyoming Department of Environmental Quality (WY DEQ), the developer took actions in 2005 that apparently were subsequently accepted by WY DEQ as sufficient to constitute commencement of construction.²⁹ Citing those actions, in comments on the April 2012 proposal the developer claimed the project was an existing source and exempt from that proposal on that basis.³⁰ Whether the project has engaged in sufficiently continuous construction activities since 2005 to prevent its PSD permit from lapsing has been a matter of dispute.³¹ However, it is not necessary to resolve that dispute for purposes of this proposed rule: if construction timely commenced and has been continuous and the permit is therefore valid, EPA agrees with the developer that the project should be considered an existing source not covered by this rule. On the other hand, if the permit has lapsed because of insufficiently continuous construction activity, then the project could not be considered to be capable of

²⁵ *Sierra Club v. U.S. Dept. of Agric.*, 841 F.Supp.2d 349, 357-60 (D.D.C. 2012), *appeal dismissed*, 716 F.3d 653, 660 (D.C. Cir. 2013).

²⁶ Tri-State Generation and Transmission Ass'n, *Electric Resource Plan Annual Progress Report* at 13 & tbl.2 (Oct. 31, 2012), available in the docket. There were five planning scenarios with assumed cost adders for CO₂ emissions and three scenarios without such cost adders. *Id.* at 10-11 & tbl.1.

²⁷ See Joint Stipulation and Settlement at 1, In the Matter of the Appeal of the Revocation of Permit No. CT-1352B Two Elk Generation, No. 07-2601 (Wyo. Env'tl. Quality Council filed Nov. 21, 2007).

²⁸ See *id.* at 2.

²⁹ See *id.*

³⁰ Comment of Two Elk Generation Partners at 2-3 (June 22, 2012), EPA-HQ-OAR-2011-0660-9798.

³¹ See, e.g., *id.* at 3.